INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement	3
Specification of errors to be urged	8
Reasons for granting the writ	10
Appendix	15

CITATIONS

Cases:

Board of Trade v. *Olsen*, 262 U. S. 1	11, 12
Borden's Co. v. *Baldwin*, 293 U. S. 194	13
Carter v. *Carter Coal Co.*, Nos. 636 and 651, Oct. Term, 1935, decided May 18, 1936	9, 12, 13
Schechter Corp., A. L. A., v. *United States*, 295 U. S. 495	12
Stafford v. *Wallace*, 258 U. S. 495	11, 12
Texas & New Orleans Railroad v. *Brotherhood of Railway Clerks*, 281 U. S. 548	10, 11
United Mine Workers v. *Coronado Coal Co.*, 259 U. S. 344	12
United States v. *Ferger*, 250 U. S. 199	11

Statute:

National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; U. S. C., Sup. 1, Title 29, Secs. 151 *et seq.*)	3, 7, 15

95053—36——1

In the Supreme Court of the United States

OCTOBER TERM, 1936

No. ——

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JONES & LAUGHLIN STEEL CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit, entered in the above cause on June 15, 1936 (R. 977), denying a petition by the National Labor Relations Board for the enforcement of its cease and desist order against the Jones & Laughlin Steel Corporation, made pursuant to the National Labor Relations Act.

OPINIONS BELOW

The findings of fact and the order of the National Labor Relations Board (R. 23–45), are not re-

ported. The opinion of the Circuit Court of Appeals (R. 975–977) is reported in 83 F. (2d) 998.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered June 15, 1936 (R. 977). A petition for rehearing was denied July 15, 1936 (R. 980). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether, as applied to respondent, the National Labor Relations Act is a valid exercise of the power of Congress to regulate commerce among the States and with foreign nations.

2. Whether the provisions of the National Labor Relations Act here involved violate Article III of the Constitution in that they improperly delegate judicial powers to the National Labor Relations Board.

3. Whether the provisions of the National Labor Relations Act here involved violate the Fifth Amendment to the Constitution in that they deprive respondent of liberty or property without due process of law.

4. Whether the provisions of the National Labor Relations Act here involved violate the Seventh Amendment to the Constitution in that they improperly deprive respondent of the right of trial by jury.

STATUTE INVOLVED

The National Labor Relations Act is printed as an Appendix, *infra,* pp. 15–33.

STATEMENT

On January 23, 1936, a written charge against respondent, the Jones & Laughlin Steel Corporation, was filed with the Regional Director for the Sixth Region of the National Labor Relations Board, pursuant to Section 10 (b) of the National Labor Relations Act, *infra* (R. 6–11). The charge was filed by the Beaver Valley Lodge No. 200, Amalgamated Association of Iron, Steel & Tin Workers of North America, and alleged that the company had engaged in and was continuing to engage in certain unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act, *infra* (R. 6).

Pursuant to Section 10 (b) of the Act, the Regional Director issued and served upon respondent a complaint and notice of hearing (R. 12–16). The complaint alleged that respondent had engaged in and was engaging in unfair labor practices prohibited by subsections (1) and (3) of Section 8, in that respondent was interfering with, coercing, and restraining its employees in their self-organization and free choice of representatives for purposes of collective bargaining or other mutual aid or protection and had discharged and demoted employees because they had joined the

above-named labor organization, in order to discourage membership therein.

On February 27, 1936, respondent filed a special appearance and answer, admitting the discharges and demotion, but averring that in all cases they were made because of inefficiency and violation of respondent's rules. Respondent also asserted that the Act was unconstitutional upon several grounds, and that its activities were intrastate and not subject to regulation by Congress or the Board (Bd. Exh. 1).

Extensive hearings were held before the Board. At the close of the evidence on the nature of respondent's business, respondent moved to dismiss the proceeding for lack of jurisdiction (R. 129). The motion was denied, whereupon counsel for respondent withdrew from further participation in the hearings (R. 130).

On April 9, 1936, the Board handed down its decision setting forth its findings of fact (R. 23–43) and entered the order here in question (R. 44–45). These findings may be summarized as follows:

Respondent is a Pennsylvania corporation which, together with its 19 subsidiaries, acquires, transports, manufactures, sells, and distributes a diversified line of steel, pig iron, and sundry ores, and other materials. It is the fourth largest enterprise of its kind in the United States, employing over 22,000 persons in its two plants at

Pittsburgh and Aliquippa, Pennsylvania. About 10,000 are employed at the latter plant. (R. 24.)

Like all large units of the steel industry, respondent is completely integrated. It owns and operates ore, coal and limestone properties and transports these essential materials in interstate commerce to its works by its own lake steamships, tugboats and barges, manned by its employees. Respondent owns, and operates by its own employees, two terminal railroads, one at each plant, over which it receives and distributes materials and products. Each system of tracks is connected directly with all parts of the mills and yards which it serves, as well as with an important interstate trunk line. Respondent alone makes 97 percent of the shipments over the Pittsburgh & Lake Erie Railroad which originate at Aliquippa. (R. 24–25, 29–30.)

Many of respondent's employees are engaged in the distribution of its products in interstate commerce. Large quantities of steel and pig iron are shipped from Aliquippa to its warehouses in Chicago, Detroit, Cincinnati, and Memphis, the shipments to the last two cities named being by respondent's own transportation equipment, manned by its employees. In Long Island City, New York, and New Orleans, Louisiana, respondent operates structural steel fabricating shops in connection with the warehousing of semifinished materials sent there from Pittsburgh and Aliquippa.

Sales offices are maintained in twenty cities of the United States, and there is a wholly owned subsidiary devoted exclusively to the distribution of respondent's product in Canada. Enormous movements and transactions in interstate commerce are constantly carried on by respondent. In all, 80 percent by value of the material received at the Aliquippa works originates outside the State of Pennsylvania, and 75 percent of the product of that plant is sold and shipped in interstate commerce. (R. 25–27.) Most of the production at the Aliquippa plant is according to special order. (R. 30.)

Many of respondent's employees at Aliquippa are members of Beaver Valley Lodge, No. 200, of the Amalgamated Association of Iron, Steel, and Tin Workers. The ten employees whose discharge led to the proceeding at bar were dismissed in the period from July 1935 to January 1936. All were active leaders of the Union; several were officers, and others were leaders of special social groups. In most cases slight reasons were assigned for the discharges—reasons not applied to others—and each discharge followed hurriedly upon the discovery of some possible pretext. (R. 33–42.)

The ten employees discharged may be classified generally as engaged in the production feature of respondent's operations at the Aliquippa works; that is, employees engaged in various duties incident to normal plant operations, such as operating a crane, inspecting motors, operating a nail ma-

chine, and the like (R. 33–40). The labor organization of which they are members, however, is of the inclusive industrial type, extending its organization efforts to employees in and around the iron and steel mills, many of whom are not engaged in production. The other labor organization here involved, the Plan of Employee Representation, sponsored by respondent, is open to all of respondent's employees at Aliquippa, including, as indicated above, many engaged in interstate commerce. (R. 33, Bd. Exh. 53.)

In conclusion, the Board found that any cessation of operations at Aliquippa would have a direct and substantial effect on interstate commerce. It also found that the acts of respondent tended to cause labor disputes which burden and obstruct commerce and the free flow of commerce. (R. 29–30, 43.)

On the basis of these findings, the Board concluded, as a matter of law, that respondent was engaging in unfair labor practices within the terms of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act (R. 43–44). It therefore issued an order requiring respondent to cease and desist from practices tending to interfere with or restrain the organization of its employees; to reinstate, with back pay, the ten men discharged in the commission of such unfair labor practices; and to post notices in the shops and

95053—36——2

yards at the Aliquippa plant saying that the company had complied with the order. (R. 44–45.)

On April 11, 1936, the Board filed in the court below its petition for the enforcement of its order (R. 972–974), and on May 9, 1936, filed an amendment thereto (R. 45a). On June 15, 1936, the court entered its judgment denying the petition (R. 977) for the reason that the order transcended the authority of Congress under the commerce clause of the Constitution. The court did not pass upon the other constitutional objections urged by respondent.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that the order of the Board herein was not shown to be one authorized to be made under the authority of Congress.

(2) In construing the Board's order in this case as being directed merely to respondent's production operations and production employees, rather than to the protection of respondent's interstate commerce against direct and substantial burdens brought about by industrial strife among any or all of respondent's employees, as well as others.

(3) In holding that the power of Congress to protect interstate commerce from the burdens and obstructions of industrial strife is dependent upon a specific present intent to impede or destroy such commerce.

(4) In holding that a strike or boycott originating among respondent's production employees would result merely in stopping production with an effect on interstate commerce too remote to warrant Federal regulation to prevent such dispute, contrary to the findings by Congress based on a study of the effects of such disputes, and contrary to the facts in the record, both of which factual bases justify the conclusion that such a strike would constitute a direct burden upon and obstruction of interstate commerce itself.

(5) In holding that the Act as applied herein is not an appropriate exercise of the power and responsibility of Congress under the commerce clause of the Constitution to protect interstate commerce from burdens and obstructions from whatever source.

(6) In holding in effect that the particular origin of industrial strife characterizes the nature of the resulting burden or obstruction upon interstate commerce, and in not judging the nature of such burden or obstruction in its relation to interstate commerce, from the character and potentialities of the strife itself.

(7) In holding that the decision of this Court in *Carter* v. *Carter Coal Company,* Nos. 636 and 651, October term, 1935, decided May 18, 1936, involving the Bituminous Coal Conservation Act of 1935, was controlling as to the non-applicability of the National Labor Relations Act under the facts of this case.

(8) In failing to hold that the Act, as here applied, is not in contravention of the Fifth Amendment or any other provision of the Constitution.

(9) In denying the petition of the National Labor Relations Board.

REASONS FOR GRANTING THE WRIT

1. The questions presented in the instant case are of the utmost public importance.

The National Labor Relations Act is the culmination of a long series of attempts by the Federal Government to deal with the national problem presented by labor disputes which obstruct and burden the free flow of interstate and foreign commerce. The gravity and national character of the problem have long been realized. Numerous and extensive studies of the causes of disputes, and of effective ways of preventing their occurrence, have been made by both Congressional and Presidential Committees since 1882. On many occasions Federal intervention in particular disputes has been found necessary to protect interstate and foreign commerce from serious harm, existing or threatened. The present Act, an outgrowth of this experience, attempts to go beyond *ad hoc* interference and, in brief, to apply to other enterprises in interstate commerce the principles successfully applied to railroads by the Railway Labor Act of 1926, approved and upheld in *Texas & New Orleans Rail-*

road v. *Brotherhood of Railway Clerks,* 281 U. S. 548.

The court below has held that the application of this Act to respondent is beyond the power of Congress under the commerce clause of the Constitution. Whether the power of the Federal Government is thus limited is a question of vital interest to the commercial welfare of the nation. It is submitted that the public interest will be promoted by the settlement in this Court of the questions involved.

2. The decision of the Circuit Court of Appeals that the order of the Board was not within the power of Congress is not in harmony with the principles laid down by this Court.

Congress is fully empowered to protect interstate commerce from burden and injury, however local may be the effective causes. *Stafford* v. *Wallace,* 258 U. S. 495; *Board of Trade* v. *Olsen,* 262 U. S. 1; *United States* v. *Ferger,* 250 U. S. 199. More specifically, it has adequate authority, as invoked in this Act, to maintain the orderly conduct of interstate commerce by providing for the peaceful settlement of disputes which recurrently burden it or threaten so to do. *Texas & New Orleans Railroad* v. *Brotherhood of Railway Clerks,* 281 U. S. 548. In many operations besides railroad transportation, labor disputes can, and Congress has correctly found in the recitals of the Act that

they do, immediately burden and obstruct commerce. The reasonable fear by Congress of the likelihood of the recurrence of such burdens or obstructions serves the purpose of a specific intent to interrupt or burden interstate commerce in the particular case. *Stafford* v. *Wallace, supra,* pp. 520–521; *Board of Trade* v. *Olsen,* 262 U. S. 1, 37; *United Mine Workers* v. *Coronado Coal Co.,* 259 U. S. 344, 408.

A. L. A. Schechter Corp. v. *United States,* 295 U. S. 495, and *Carter* v. *Carter Coal Company,* Nos. 636 and 651, decided May 18, 1936, are not to the contrary. In those cases the Court held unconstitutional the regulation of wages and hours in activities occurring after the movement of interstate commerce has ceased or before it has begun, but made it clear that where the activity occurs, as in the present case, in the midst of a well-defined flow of commerce, it is still governed by the rule of *Stafford* v. *Wallace* and *Board of Trade* v. *Olsen, supra.*

Moreover, the *Schechter* and *Carter* cases deal with an entirely different type of regulation. They concern labor provisions which sought under the commerce clause to regulate hours and wages of production employees so as to stabilize production costs and thus to stabilize interstate commerce in poultry and coal. The present Act does not regulate hours or wages. It is directed solely to the protection of interstate commerce itself from the

actual interruption, burden and obstruction caused by employer-employee strife, such as strikes and boycotts. While, as a means to such protection, the present order restrains the conduct of a corporation engaged extensively in interstate commerce toward its production employees, among others, this does not make the order a regulation of production operations rather than a regulation of commerce. The relation to production, if it may be said to exist at all, is incidental and the regulation is permissible because necessary to prevent employer-employee conflict under such factual circumstances and of such a nature as would immediately, directly, and substantially burden or obstruct the actual physical movement of, and continuous trading in, commodities in interstate commerce. While the *Carter* case did deal with a provision of the Bituminous Coal Conservation Act relating to collective bargaining, that provision was considered merely a subordinate part of the wage and hour provisions, and as a means of fixing wages and hours in production. Neither case, therefore, considered or passed upon the issue presented here.

3. The record meets the requirements set forth in *Borden's Co.* v. *Baldwin*, 293 U. S. 194. Extensive evidence was taken (R. 399–970) and findings made by the Board (R. 27–31, 42–43) regarding the steel industry, the effect of labor disputes upon interstate commerce, and the appropriateness of the

means provided in this Act for the elimination or mitigation of such disputes.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Fifth Circuit should be granted.

STANLEY REED,
Solicitor General.

CHARLES FAHY,
General Counsel,
National Labor Relations Board.

SEPTEMBER 1936.

APPENDIX

NATIONAL LABOR RELATIONS ACT (ACT OF JULY 5, 1935, C. 372, 49 STAT. 449; U. S. C., SUP. I, TITLE 29, SECS. 151 ET SEQ.)

To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials of manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

96063—36—3

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the

purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133 [1] approved June 14, 1935.

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all

[1] So in original.

the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of

conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified

from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership

in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain [1] such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

---

[1] So in original.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals

to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds

for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript

of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101–115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board

shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of serv-

ice of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec. 707 (a)), as amended from time to time, or of section 77 B, paragraphs (l) and (m) of the Act ap-

proved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

Approved, July 5, 1935.

U. S. GOVERNMENT PRINTING OFFICE: 1935